

avulsion; however, she does dispute the river accreted south sometime between 1906 and 1916. Savoy claims the evidence of accretion is too tenuous and thus the District Court erred when it moved the northern boundary of Lot 7 south to the midpoint of the abandoned channel. Savoy maintains the northern boundary of her Lot 7 should be the midpoint of the river as it existed in 1906, prior to its avulsion to the north in 1916.

¶60 "Avulsion" occurs when a river suddenly changes its channel to form a new one. If avulsion moves a river away from a landowner's property, the property boundary does not change. "Accretion" occurs when a river gradually and imperceptibly changes its course over a period of time, resulting in sedimentary deposits on one bank along the water line. In this case, the property boundary shifts with the water line. *Montana Dept. of State Lands v. Armstrong* (1992), 251 Mont. 235, 238, 824 P.2d 255, 257-58 (citation omitted).

¶61 [11] There was ample evidence in the record to support the southward movement of the Sun River by accretion after the 1906 survey but before the 1916 avulsive event. Because the river accreted south after 1906, the year the lots in question were created, the property boundary moved along with the water line. However, when the river avulsed to its present day location in 1916, the property boundary did not move. Thus, we hold the District Court correctly determined the boundary between Hardings' and Savoy's lots.

¶62 As to Murray's claim, we conclude, based upon the evidence in the record, the District Court did not err when it found the Sun River, in 1948, avulsed north in the area of the Island to its present day location. The property boundaries remained where they were prior to the avulsion. Thus, we hold the District Court correctly determined the boundary line between Skogens' and Murray's lots.

¶63 Since we have affirmed the District Court's decisions regarding the property boundaries, we decline to discuss the merits of Hardings' and Skogens' alternative positions regarding adverse possession and laches.

ISSUE 5

¶64 Did the District Court err in denying Hardings' and Skogens' claims for attorney fees?

¶65 Hardings and Skogens concede under the general American Rule, each side is responsible for paying its own attorney fees, and the equitable exception to this rule applies only to a party defending a wholly frivolous or malicious lawsuit. *Foy v. Anderson* (1978), 176

Part 2 Watercourses

70-18-201. Alluvion or accretion — increase of bank. Where from natural causes land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right-of-way over the bank.

History: En. Sec. 1401, Civ. C. 1895; re-en. Sec. 4573, Rev. C. 1907; re-en. Sec. 6820, R.C.M. 1921; Cal. Civ. C. Sec. 1014; Field Civ. C. Sec. 443; re-en. Sec. 6820, R.C.M. 1935; R.C.M. 1947, 67-1302.

70-18-202. Sudden removal of bank — right of owner to reclaim. If a river or stream, navigable or not navigable, carries away by sudden violence a considerable and distinguishable part of a bank and bears it to the opposite bank or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

History: En. Sec. 1402, Civ. C. 1895; re-en. Sec. 4574, Rev. C. 1907; re-en. Sec. 6821, R.C.M. 1921; Cal. Civ. C. Sec. 1015; Field Civ. C. Sec. 444; re-en. Sec. 6821, R.C.M. 1935; R.C.M. 1947, 67-1303.

70-18-203. Island formed in navigable stream. Islands and accumulations of land formed in the beds of streams which are navigable belong to the state if there is no title or prescription to the contrary.

History: En. Sec. 1403, Civ. C. 1895; re-en. Sec. 4575, Rev. C. 1907; re-en. Sec. 6822, R.C.M. 1921; Cal. Civ. C. Sec. 1016; Field Civ. C. Sec. 445; re-en. Sec. 6822, R.C.M. 1935; R.C.M. 1947, 67-1304.

70-18-204. Island formed in nonnavigable stream. An island or accumulation of land formed in a stream which is not navigable belongs to the owner of the shore on that side where the island or accumulation is formed or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

History: En. Sec. 1404, Civ. C. 1895; re-en. Sec. 4576, Rev. C. 1907; re-en. Sec. 6823, R.C.M. 1921; Cal. Civ. C. Sec. 1017; Field Civ. C. Sec. 446; re-en. Sec. 6823, R.C.M. 1935; R.C.M. 1947, 67-1305.

70-18-205. Island formed by division of stream. If a stream navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore and thereby forms an island, the island belongs to such owner.

History: En. Sec. 1405, Civ. C. 1895; re-en. Sec. 4577, Rev. C. 1907; re-en. Sec. 6824, R.C.M. 1921; Cal. Civ. C. Sec. 1018; Field Civ. C. Sec. 447; re-en. Sec. 6824, R.C.M. 1935; R.C.M. 1947, 67-1306.

Section 70-18-202 describes avulsion